IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEALS No 448 & 450 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RINKI PETROCHEM PVT. LTD.

Versus

A.C.I.T.

Appearance:

MR JP SHAH for Petitioner No. 1

MR KM PARIKH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 08/02/2005

COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 Heard Mr.J.P.Shah, learned Advocate for the appellant and Mr.K.M.parikh, learned Standing Counsel for the respondent.

2 ADMIT.

3 The following substantial question of law arises for consideration :

"Whether, on the facts and in the circumstances of the case, the Tribunal could have distinguished its own orders for Assessment Years 1987-88 and 1984-85 without recording any findings as to how the said orders were not applicable for the year under consideration, despite the assessee having pleaded that the facts were identical ?"

4 As both these Tax Appeals emanate from the same order of the Tribunal i.e. order dated 31st July 2003 made in case of assessee for Assessment Year 1988-89 the appeals have been heard together. With the consent of the learned Counsel of both the sides the appeals are taken up for final hearing and disposal.

5 The Assessment Year is 1988-89 and the relevant accounting period is the calendar year ended on 31st December 1987. The Assessing Officer made addition of Rs.28,09,012/- (Rupees Twenty eight lacs Nine thousand Twelve only) on account of bogus purchase and a further addition of Rs.36,67,950/- (Rupees Thirty six lacs Sixty seven thousand Nine hundred Fifty only), being the profit on purported unaccounted sale. The appellant assessee challenged both these additions but the CIT (Appeals) for the reasons recorded in his order dated 27th November 1992 confirmed both the additions. The assessee carried the matter in appeal before the Tribunal.

6 The Tribunal for the reasons stated in its impugned order dated 31st July 2003 confirmed the order of the lower authorities.

7 Mr.J.P.Shah, learned Advocate for the appellant invited attention to paragraph No.9 of the impugned order of the Tribunal to submit that on behalf of the appellant-assessee reliance was placed on the orders of the Tribunal for Assessment Year 1987-88 and 1984-85 to contend that on identical set of facts the issues involved in the present appeals had been decided by the Tribunal in favour of the assessee. Copies of the orders

of the Tribunal for the said earlier assessment years have been placed on record. However, the grievance is that the Tribunal has without recording any findings as to why the said orders in assessee's own case are not applicable, dismissed the appeals of the assessee and confirmed the findings of the lower authorities.

8 Mr.K.M.Parikh, learned Standing Counsel appearing on behalf of the respondent-revenue submitted that if the facts involved for the year under consideration are distinguishable, it is open to the Tribunal to take a different view in the year under consideration as each Assessment Year is independent.

9 There can be no dispute with the proposition stated by Mr.Parikh. Though each Assessment Year is independent and the principles of res judicata are not applicable to tax proceedings, it is equally well settled that an authority, including the Tribunal, should be slow in departing from a view already taken in one year if there is no change in the facts and circumstances of the case. The Tribunal also appears to be aware of this legal position when it states in paragraph No.11 that ;

> "Normally, the judicial proprietary demands that we should follow our earlier order if the facts involved are identical".

10 Thus, the position in law is well accepted, but when the Tribunal proceeds to determine the controversy before it, as the impugned order shows, it fails to abide by the settled legal position . The Tribunal reproduces extracts from the decision of the Tribunal in case of one Shwetamber Steel Limited Vs. I.T.O, the decisions of High Courts of Delhi and Rajasthan but fails to point out any distinguishing facts or evidence which compelled the Tribunal to take a different view of the matter. The Tribunal records

> "The set of facts are identical to above judgments of Hon'ble Delhi and Rajasthan High Courts. Therefore, we respectfully follow the above orders of the High Court as neither any contrary decision of any High Court has been pointed out by the parties nor has been found by us".

However, in the entire order the Tribunal nowhere records as to what were the facts for Assessment Year 1987-88 and 1984-85 and why the said facts are different or distinguishable from the facts for the present year

i.e. Assessment Year 1988-89.

11 In the aforesaid fact situation, the impugned order of the Tribunal in so far as it confirms the orders of CIT (Appeals) is quashed and set aside and the appeals are restored to the file of the Tribunal for deciding the same afresh after hearing both the sides. Needless to state, it is always open to the Tribunal to arrive at its own conclusion after hearing both the sides and recording as to what were the issues which arose for determination, what were the facts found by the authorities in the year under consideration and the facts found by the Tribunal in its earlier orders in assessee's own case, and what was the evidence pro and contra. The question is therefore answered accordingly.

12. In the result, both the appeals are allowed to the aforesaid extent.

Sd/-
(D.A.Mehta,J)
Sd/-
(H.N.Devani,J)

m.m.bhatt